

§ 778.220

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vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides \$240 vacation pay.)

(2) An employee who is entitled under his employment contract to 8 hours' pay at his rate of \$5 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid under his contract, \$250 as straight-time compensation for 50 hours plus \$40 as idle holiday pay. He is owed, under the statute, an additional \$25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of \$5 per hour has not been increased by virtue of the holiday pay but no part of the \$40 holiday pay may be credited toward statutory overtime compensation due.

(b) *Premiums for holiday work distinguished.* The example in paragraph (a)(2) of this section should be distinguished from a situation in which an employee is entitled to idle holiday pay under the employment agreement only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay.

(1) The typical situation is one in which an employee is entitled by contract to 8 hours' pay at his rate of \$5 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of \$7.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, \$67.50 (9×\$7.50) for the holiday work and \$205 for the other 41 hours worked in the week, a total of \$272.50. Under the statute (which does not require premium pay for a holiday) he is owed \$275 for a workweek of 50 hours at a rate of \$5 an hour. Since the holiday premium is one and one-half times the established rate for nonholiday work, it does not increase the reg-

ular rate because it qualifies as an overtime premium under section 7(e)(6), and the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of \$2.50 to meet the statutory requirements. (For a discussion of holiday premiums see § 778.203.)

(2) If all other conditions remained the same but the contract called for the payment of \$10 (double time) for each hour worked on the holiday, the employee would receive, under his contract \$90 (9×\$10) for the holiday work in addition to \$205 for the other 41 hours worked, a total of \$295. Since this holiday premium is also an overtime premium under section 7(e)(6), it is excludable from the regular rate and the employer may credit it toward statutory overtime compensation due. Because the total thus paid exceeds the statutory requirements, no additional compensation is due under the Act. In distinguishing this situation from that in the example in paragraph (a)(2) of this section, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of \$85 attributable to the holiday: 8 hours' idle holiday pay at \$5 an hour, due him whether he worked or not, and \$45 pay at the nonholiday rate for 9 hours' work on the holiday. In the situation discussed in this paragraph the employee received \$90 pay for working on the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7312, Jan. 23, 1981]

§ 778.220 “Show-up” or “reporting” pay.

(a) *Applicable principles.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular work day or on another day on which he has

been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their employees in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in subpart B of this part and §§ 778.201 through 778.207, that portion of such payment which represents compensation at the applicable rates for the straight time or overtime hours actually worked, if any, during such period may be credited as straight time or overtime compensation, as the case may be, in computing overtime compensation due under the Act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

(b) *Application illustrated.* To illustrate, assume that an employee entitled to overtime pay after 40 hours a week whose workweek begins on Monday and who is paid \$5 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive, making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the \$10 earned in the 2

hours of work on Monday but an extra 2 hours' "show-up" pay, or \$10 by reason of this agreement. However, since this \$10 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains \$5 and the overtime requirements of the Act are satisfied if he receives, in addition to the \$210 straight-time pay for 42 hours and the \$10 "show-up" payment, the sum of \$5 as extra compensation for the 2 hours of overtime work on Saturday.

[46 FR 7312, Jan. 23, 1981]

§ 778.221 "Call-back" pay.

(a) *General.* In the interest of simplicity and uniformity, the principles discussed in § 778.220 are applied also with respect to typical minimum "call-back" or "call-out" payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours' pay at the applicable straight time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

(b) *Application illustrated.* The application of these principles to call-back payments may be illustrated as follows: An employment agreement provides a minimum of 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement, who are entitled to overtime pay after 40 hours a week, normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of \$5 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or \$22.50, under the